

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES**

**PUBLIC**

1. **Name:** Full name (include any former names used).

Thomas John Perrelli

2. **Position:** State the position for which you have been nominated.

Associate Attorney General

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Jenner & Block  
1099 New York Ave. NW, Suite 900  
Washington, DC 20001

I currently reside in Arlington, Virginia.

4. **Birthplace:** State date and place of birth.

3/12/1966, Falls Church, Virginia.

5. **Marital Status:** (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

I am married to Kristine Joy Lucius.  
Chief Counsel for Civil Justice and Deputy Staff Director  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

We have one dependent child.

6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Harvard Law School, J.D. 1991 (attended from 9/88-6/91)

Brown University, A.B. 1988 (attended from 9/84-5/88)

Took mathematics classes at George Mason University from 9/82-5/83 (no degree awarded)

7. **Employment Record:** List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

**May 2008 — present**

**Managing Partner**

Jenner & Block LLP  
1099 New York Ave. NW  
Washington, DC 20001

**June 2001 — May 2008**

**Partner; Managing Partner of D.C. Office since 2005**

Jenner & Block LLP  
601 Thirteenth St. NW  
Washington, DC 20005

**January 2001 — June 2001**

**Unemployed**

**September 1999 — January 2001**

**Deputy Assistant Attorney General, Civil Division**

United States Department of Justice  
950 Pennsylvania Ave. NW  
Washington, DC 20530

**December 1997 — September 1999**

**Counsel to the Attorney General**

United States Department of Justice  
950 Pennsylvania Ave. NW  
Washington, DC 20530

**November 1992 — December 1997**

**Associate**

Jenner & Block LLP  
601 Thirteenth St. NW  
Washington, DC 20005

**1992 — 2006**

**Co-President (briefly) and Member**

Brown Club of Washington/Brown Alumni Schools Program

**September 1991 — September 1992**

**Law Clerk**

Hon. Royce C. Lamberth  
U.S. District Court for the District of Columbia  
333 Constitution Ave. NW  
Washington, DC 20001

**May 1991 (estimated) — August 1991 (estimated)**

**Summer Associate**

Wilmer Cutler & Pickering  
2445 M Street NW  
Washington, DC 20037

**January 1991 (estimated) — May 1991 (estimated)**

**Teaching Assistant**

Brown University Political Science Department  
36 Prospect Street  
Providence, RI 02912

**September 1990 (estimated) — May 1991 (estimated)**

**Legal Methods Instructor**

Harvard Law School  
1563 Massachusetts Ave.  
Cambridge, MA 02138

**May 1990 (estimated) — August 1990 (estimated)**

**Summer Associate**

Jenner & Block LLP  
601 Thirteenth St. NW  
Washington, DC 20005

**September 1989 (estimated) — May 1990 (estimated)**

**Legal Methods Instructor**

Harvard Law School  
1563 Massachusetts Ave.  
Cambridge, MA 02138

**August 1989 — May 1991**

**Editor / Managing Editor**

Harvard Law Review  
1511 Massachusetts Ave.  
Cambridge, MA 02138

**May 1989 (estimated) — August 1989 (estimated)**

**Summer Associate**

Sutherland, Asbill & Brennan  
1275 Pennsylvania Ave., NW  
Washington, DC 20004

**June 1988 (estimated) — August 1988 (estimated)**

**Summer Intern**

Immigration & Naturalization Service  
U.S. Department of Justice  
4th and Eye Streets, NW  
Washington, DC 20536

**1986 (estimated) — present (uncertain if continues to exist)**

**Pro Scientia**

Non-profit dedicated to raising scholarship funds for students of the classics.  
I was a co-founder/president of this organization, which has not operated since the 1990s.  
I have been unable to ascertain whether the organization exists in any form today.

8. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

N/A

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

This list excludes honors or awards before 1984:

Recognized as one of the leading media and entertainment lawyers in the United States by *Chambers & Partners USA*, 2007-2008

Named to “40 under 40” by the *National Law Journal*, indicating recognition as one of the top 40 lawyers in the country under the age of 40, 2005

Recipient of the Albert E. Jenner Pro Bono Award, 2005

Recognized by *Lawdragon* as one of its 500 “New Stars, New Worlds,” 2006

Named Best Intellectual Property Lawyer in Washington, DC by *Washington Business Journal*, 2008

Member of *Phi Beta Kappa*

Freshman Math (1st) and Latin (2nd) prizes at Brown University

National Scholar program at Brown University

National Merit Scholarship

Elks Club National Scholarship

National Cash Register Centennial Scholarship

Jostens National Scholarship

National Junior Classical League Rhea Miller Scholarship

Classical Association of the Middle West and South Scholarship

Virginia Junior Classical League Scholarship

W.T. Woodson High School "It's Academic" Scholarship

W.T. Woodson High School Latin Club Steven Greenwood Scholarship

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

Bar of the District of Columbia

Virginia Bar

11. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Virginia (1991) (Associate status)

District of Columbia (1993)

Due to a late payment of my D.C. bar dues in 1998, my D.C. bar license was temporarily suspended. In late 1997, I left Jenner & Block and went to the Department of Justice as Counsel to the Attorney General. I arranged for changes of address and forwarding of my mail. At some point in the summer of 1998, the D.C. bar sent my dues notice to Jenner's D.C. office. It was not forwarded to me. Subsequently, the D.C. bar sent to Jenner's D.C. office reminder letters and at least two certified letters saying that my license would be suspended if I did not pay. Someone at Jenner signed for those certified letters, but none of the letters from the D.C. Bar were forwarded to me. A secretary at the firm found the letters in January of 1999 and informed me. I immediately contacted the D.C. Bar and was told that all I needed to do to return to good standing was send a letter with my dues, the normal late penalty, and an additional penalty. I did so and was reinstated.

to good standing. During the period when I was unaware that my license had been suspended, I was not appearing in court. I also continued to be an associate member of the Virginia bar during that period.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

This list does not include pro hac vice admissions for particular cases or admission to practice under provisions that generally allow attorneys representing the United States to practice (1999-2001).

U.S. Supreme Court (1996)

U.S. Court of Appeals for the Federal Circuit (2002)

U.S. District Court for the District of Columbia (1994)

U.S. Court of Appeals for the District of Columbia Circuit (2003)

U.S. Court of Appeals for the Fourth Circuit (1991)

U.S. Court of Appeals for the Eighth Circuit (2003)

U.S. District Court for the District of Maryland (1996-97): membership lapsed upon my transition to government service; 2003-2007, membership lapsed when the case I was working on was completed

Supreme Court of Virginia (1991)

## 12. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

**Brown Club of Washington and Brown Alumni Schools Program:** university alumni groups. I participated on the Brown Club from 1992 to 2006 and served briefly, I believe in 2003, as co-president. I have been involved in alumni interviewing and served as co-chair of my 10th reunion.

**American Bar Association:** professional organization. I joined in approximately 1993 and have renewed my membership annually.

**Obama for America National Legal Coordinating Committee, Post-Election Litigation Group, National Finance Committee, and Mid-Atlantic Finance Committee**

**Pro Scientia:** Non-profit dedicated to raising scholarship funds for students of the classics. I was a co-founder/president of this organization, which has not operated since the 1990s. I have been unable to ascertain whether the organization exists in any form today.

**Phi Beta Kappa, Rhode Island Chapter:** member since 1987

**Rock Spring Congregational United Church of Christ:** member since 2007.

I have also made charitable contributions to a number of organizations that refer to donors as “members” but that require no apparent role other than making contributions and attending events or performances. These include Wolf Trap Center for the Performing Arts, the Kennedy Center, the Shakespeare Theatre, the Smithsonian, the Nature Conservancy, and Habitat for Humanity.

- b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

No

13. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

I have done my best to identify articles responsive to this question through searches of publicly available electronic databases.

*Defending Lanham Claims Against Expressive Works and Raising a Defense Based on the First Amendment*, Media Law Resource Bulletin (Jan. 2004)

*Piracy Battles Online*, Copyright World (Feb. 2003)

*9th Circuit Denies Dustin Hoffman’s Publicity Claim*, National Law Journal (Oct. 22, 2001) (with co-author)

*Case Note, Search and Seizure — Suspicionless Drug Testing*, 103 Harv. L. Rev. 592 (1989)

*Case Comment, Section 1983: Golden State Transit Corp. v. Los Angeles*, 104 Harv. L. Rev. 339 (1990)

In law school, I was an editor of and eventually Managing Editor of the *Harvard Law Review* from 1989 to 1991. I did cite checking on the *Harvard Civil Rights-Civil Liberties Law Journal* and the *Harvard Journal on Legislation* in 1988-89. I have provided copies of articles written by me for these publications, but not the entirety of the publications over this four year period.

In college, I was an editor of and eventually Editor-in-chief of the *Critical Review*, which provided student-written reviews of courses. I was also an editor of and eventually Editor-in-Chief of *Clio*, which published undergraduate history papers. I have not provided copies of those publications.

- b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

N/A

While at Brown University, I worked on the Educational Policy Committee and the College Curriculum Council, which undertook a review of the school's curriculum. I do not have copies of any recommendations that may have been made.

- c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have done my best to identify testimony, statements, and other communications responsive to this question through searches of publicly available electronic databases. Attached please find the following materials:

Transcript of Public Hearing, Judicial Review Commission on Foreign Asset Control (Oct. 3, 2000).

Meeting Summary from CDC, "Interagency Committee on Smoking & Health: Advertising Issues — Legal Perspective" (Oct. 26, 2000).

Letter from Thomas J. Perrelli, Counsel to the Attorney General, to Hon. E. Norman Veasey, Chair of the Ethics 2000 Commission, and to M. Peter Moser, Chair of the ABA Ethics Commission (April 19, 1999).

- d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and



readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I have done my best to identify speeches and presentations responsive to this question through searches of publicly available electronic databases.

I give regular business or management presentations within the firm at partners' meetings and in my role as managing partner.

I have also given occasional talks or participated in panel discussions on copyright infringement, attorney-client privilege, and crisis management. I do not have copies of speeches or transcripts, but I am providing notes from any panel discussions that I have been able to locate.

As a high school student, I gave speeches in the context of leadership roles in various clubs and organizations -- principally the Latin Club, Math Team, the Virginia Junior Classical League, and the National Junior Classical League -- as well as at my high school graduation.

Since college, I have occasionally done presentations to prospective applicants to Brown University and their parents, as well as presentations to Brown alums about topics such as working in Washington and career planning. All of these have been in Washington D.C., except I did one large panel discussion in Providence, Rhode Island. None of these speeches have involved anything political or otherwise controversial.

I have given toasts at small events -- weddings, showers, birthday dinners, etc.

I have given the eulogy at three funerals:

1) Maureen O'Donnell, my high school Latin teacher; this funeral was in 1989 in Fairfax, Virginia. There was some television coverage of that event, including briefly my eulogy, because Mrs. O'Donnell was well-known figure in the community. I am attaching an article from The Washington Post regarding Mrs. O'Donnell's funeral, titled "Legacy of Honor" (Mar. 24, 1989).

2) Thomas N. Perrelli, my father; the funeral was in July of 2002 in Fairfax, VA.

3) Stanley Wolcott, my uncle; the funeral was in December of 2003 in Barre, VT.

If the Committee is interested in notes from the eulogies, I can search for them.

As an associate at Jenner & Block, I have no recollection of having given speeches.

As a DOJ official, I generally did not give speeches at outside events; I did do the occasional presentation at trainings or other events internal to the government. I do not have notes or transcripts of such presentations but am attaching a meeting summary published by the CDC regarding advertising issues.

As a partner at Jenner & Block, the following are external presentations that I remember:

1) I was on a panel concerning crisis management for the Counsel-to-Counsel program, which brings together law firm lawyers and in-house counsel for panel discussions on specific topics (usually about 25 people). That event was at the Sofitel Hotel in New York City on May 11, 2005. I am attaching an article from Corporate Legal Times regarding this presentation, titled “Corporate Crises Thrust GCs Into the Spotlight” (Sept. 2005 — Corporate Legal Times). I am also attaching my notes from it, titled “Crisis Management” (May 11, 2005 — New York, NY).

2) I was on a panel concerning attorney-client privilege for the Counsel-to-Counsel program at the Ritz-Carlton Georgetown in Washington, D.C., on October 12, 2006. I am attaching my notes from this presentation, which was titled, “Managing Attorney-Client Communications in a Time of Eroding Privilege.” The notes are titled “Privilege and Lawyers Wearing Multiple Hats” (Oct. 12, 2006 — Washington, D.C.).

3) I was on a panel at the D.C. Bar Health Law and Litigation Sections on the Schiavo case on June 10, 2005, at the D.C. Bar Conference Center. Other panelists were academics with differing viewpoints. I am attaching my notes from that presentation, titled “Schiavo Presentation” (June 10, 2005 — Washington, D.C.).

4) I spoke at an Association of Corporate Counsel continuing legal education breakfast titled, “Life After Grokster,” in McLean, Virginia, on September 13, 2005, regarding the Supreme Court’s decision in *MGM v. Grokster*, a case concerning copyright infringement by peer-to-peer file-sharing services. I was one of the counsel who represented MGM and the major motion picture studios and record companies in that case. I have not been able to locate notes from this discussion.

5) I was on two panel discussions immediately after the Grokster decision came out. The first was at a D.C. Bar Association discussion on July 6, 2005. The second was at the Museum of Television & Radio Media Center in New York on July 12, 2005, titled, “The Implications of the Grokster Decision,” concerning copyright infringement and new technologies. Other panelists included general counsels of major content providers. I have not been able to locate notes from these panel discussions. However, I am attaching an article from Washington Internet

Daily titled “Everyone Generally Relieved, Post-‘Grokster,’ But Lower Court Interpretation Feared” (July 7, 2005 — Washington Internet Daily), which discusses the first presentation, and an article from Daily Variety, titled “Grokster Ruling Stirs Dissent” (July 14, 2005 — Daily Variety), that discusses the second.

6) I was on two panel discussions on the *MGM v. Grokster* case during the week of its March 29, 2005 Supreme Court oral argument. One was at George Washington University School of Law, and the other was at the University of the District of Columbia. Other panelists included the Register of Copyrights and representatives of the Electronic Frontier Foundation. I have not been able to locate notes for these two panels.

7) I did a CLE for the Georgia Bar titled, “What’s Keeping You Up At Night — Or Should Be: Things Every In-House Counsel Should Know About Internet File-Trading,” during a seminar on December 11-12, 2003 at the Swissotel in Atlanta. I am attaching that presentation’s materials, titled, “What’s Keeping You Up At Night — Or Should Be: Things Every In-House Counsel Should Know About Internet File-Trading” (Dec. 11-12, 2003 — Atlanta, GA).

8) I was on a panel with Professor Jonathan Zittrain of Harvard Law School before the Boston Bar Association in 2004. The panel concerned copyright and new technologies. I have not located notes from this panel discussion.

9) I was a participant in a small meeting for clients and potential clients entitled “What Medical Societies, Other Health Care Organizations, and Their Members Need to Know,” with other Jenner & Block attorneys, regarding HIPAA’s privacy requirements. The presentation was on December 11, 2001 in Washington, D.C. I have not found any notes from my portion of the session.

10) I moderated a panel discussion on copyright and new technologies at the Corporate Legal Times Superconference in Chicago in 2006. My role was limited to facilitating discussion. I have not located notes from this panel discussion.

11) I recently did a panel discussion on law firm management for Bisnow. Other panelists included other managing partners at D.C. firms. I have not located notes from this panel discussion, but I am providing two write-ups from the session sent to Bisnow subscribers: “Laterals on Discount” (Dec. 9, 2008 — Bisnow) and “Obama Era Predictions” (Dec. 1, 2008 — Bisnow).

- e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these

interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have occasionally talked to reporters on issues related to my practice, as well as the recent presidential campaign. I have done my best to identify articles in which I am quoted directly that are responsive to this question through searches of publicly available electronic databases.

“High Court’s Hot Cases,” *Corporate Counsel* (Sept. 2001)

Claude R. Marx, “Democrats Vow Lawsuit over State’s Congressional Redistricting,” *Intelligencer Journal (Lancaster, PA)* (Jan. 5, 2002)

Mark Skertic, “Stooges Get the Last Laugh,” *Chicago Sun-Times* (Jan. 8, 2002)

Vanessa Blum, “Why Bush Won’t Let Go: To the White House, the Paper Fight with Congress is Part of a Bigger Plan to Restore Presidential Power,” *Legal Times* (Feb. 4, 2002)

Dave Davies, “Dem Court Victory May Help GOP,” *Philadelphia Daily News* (Apr. 10, 2002)

Brian Ford, “Supreme Court Asked To Take Over Redistricting,” *Associated Press State & Local Wire* (Apr. 11, 2002)

Brian Ford, “Redistricting Pact Called Unlikely,” *The Tulsa World* (Apr. 12, 2002)

Brian Ford, “House OKs GOP-Crafted Bill,” *The Tulsa World* (May 24, 2002)

Tim Talley, “State Supreme Court Gets Congressional Redistricting Case,” *Associated Press State & Local Wire* (June 20, 2002)

Marie Price, “OK Supreme Court Expected To Rule on Redistricting Soon,” *The Journal Record (Oklahoma City, OK)* (June 21, 2002)

Tom Schoenberg, “DOJ’s \$289 Billion Tobacco Claim,” *Legal Times* (Feb. 3, 2003)

“Longhorns on the Lamb,” *Dow Jones Factiva* (Oct. 1, 2003)

Jenner & Block’s Pro Bono Team Wins Major Victory in Right To Die Case, *PR Newswire* (May 7, 2004)

Tony Mauro, “In Right-To-Die Case, a Question of Timing,” *Legal Times* (Sept. 6, 2004)

Randy Nieves Ruiz, "Court Sides with Husband who Wants Wife Taken off Life Support," *Agence France Presse English Wire* (Sept. 23, 2004)

"Florida Court Strikes Down 'Terri's Law,'" *CNN.com* (Sept. 23, 2004)

Jan Crawford Greenburg, "Legal Action as Extraordinary as Case Itself," *Orlando Sentinel* (Mar. 23, 2005)

Jan Crawford Greenburg, "Schindlers Argue New Law's Intent," *Chicago Tribune* (Mar. 23, 2005)

Jan Crawford Greenburg, "Parents Face Challenges in U.S. Supreme Court," *Chicago Tribune* (Mar. 24, 2005)

Jan Crawford Greenburg, "With High Court's Ruling, Legal Battle over Schiavo's Fate Nears End," *Chicago Tribune* (Mar. 24, 2005)

Jan Crawford Greenburg, "Courts Resist Yielding to Power of Congress," *Chicago Tribune* (Mar. 25, 2005)

"Jenner & Block Set To Argue Landmark Supreme Court Copyright Case," *PR Newswire* (Mar. 29, 2005)

Jonathan Ringel & Vanessa Blum, "Judges under Fire after Schiavo Death," *Legal Times* (April 4, 2005)

Jonathan Ringel & Vanessa Blum, "Standing Tall: In Aftermath of Schiavo Case, a Steadfast Judiciary Comes under Increased Pressure from Congress," *Broward Daily Business Review* (Apr. 7, 2005)

John Thor-Dahlburg, "Fighting for a Principle, for Free; Both Sides in the Terri Schiavo Case Received Substantial Financial Support from People who Believed in a Cause" *Los Angeles Times* (April 17, 2005)

"Everyone Generally Relieved, Post-'Grokster,' But Lower Court Interpretation Feared," *Washington Internet Daily* (July 7, 2005)

William Triplett, "Experts Clash over P2P Ruling," *Daily Variety* (July 13, 2005)

"Grokster Ruling Stirs Dissent," *Daily Variety* (July 14, 2005)

Scott M. Gawlicki, "Corporate Crises Thrust GCs Into the Spotlight," *Corporate Legal Times* (Sept. 2005)

Hilary Lewis, "Building an Entertainment Beast in D.C.," *Legal Times* (Oct. 10, 2005)

Hilary Lewis, "Anatomy of a Practice: Washington, DC's Jenner & Block Builds Music and Movie Client Base," *Entertainment Law & Finance* (Nov. 2005)

Michael Levenson & Jonathan Saltzman, "At Harvard Law, A Unifying Voice: Classmates Recall Obama as Even-Handed Leader," *Boston Globe* (Jan. 28, 2007)

Anna Schneider-Mayerson, "It's Obamalot!" *New York Observer* (Mar. 12, 2007)

"Leading Copyright & New Media Lawyer Steven R. Englund Joins Jenner & Block," PR Newswire (July 24, 2007)

"What's Up at Jenner & Block," *Bisnow Business* (July 27, 2007), available at [http://www.bisnow.com/archives\\_lfw/index\\_jennerbloch.html](http://www.bisnow.com/archives_lfw/index_jennerbloch.html)

Edward Luce & Demetri Sevastopulo, "Obama's Journey: He Gets It," *FT.com* (Nov. 5, 2008)

"Obama Era Predictions," *Bisnow* (Dec. 1, 2008)

Carrie Budoff Brown, "School Buds: 20 Harvard Classmates Advising Obama," *Politico* (Dec. 5, 2008)

"Laterals on Discount," *Bisnow* (Dec. 9, 2008)

Stephen Dinan & Jerry Seper, "Obama's Justice Pick Draws Fire of Pro-Lifers," *Washington Times* (Jan. 6, 2009)

**14. Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

**September 1999 — January 2001**

**Deputy Assistant Attorney General**

United States Department of Justice

950 Pennsylvania Ave. NW

Washington, DC 20530

*Appointed by Attorney General Janet Reno*

**December 1997 — September 1999**

**Counsel to the Attorney General**

United States Department of Justice

950 Pennsylvania Ave. NW  
Washington, DC 20530  
*Appointed by Attorney General Janet Reno*

**September 1991 — September 1992**  
**Law Clerk to the Honorable Royce C. Lamberth**  
United States District Court for the District of Columbia  
333 Constitution Ave. NW  
Washington, DC 20001  
*Appointed by the Honorable Royce C. Lamberth*

In addition, as noted above, I was a summer intern at the Immigration and Naturalization Service

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

**Obama for America National Legal Coordinating Committee, Post-Election Litigation Group, National Finance Committee, and Mid-Atlantic Finance Committee:** I served as a volunteer lawyer and did fundraising, February 2007-November 2008.

**District Nominating Convention, Arlington, VA.** Attended local nominating convention for the Democratic presidential primary, 2008.

**John Kerry Campaign/Democratic National Committee:** I was a volunteer lawyer for the campaign on election protection matters (October 2004-November 2004).

**Jenner & Block PAC:** I have not held any position overseeing my law firm's political action committee, but I am one of many people who have input on its contributions.

15. **Legal Career:** Please answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
  - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

Law Clerk for the Honorable Royce C. Lamberth, United States District Court for the District of Columbia, 9/1991-9/1992

- ii. whether you practiced alone, and if so, the addresses and dates;

N/A

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

11/1992-11/1997

Jenner & Block  
601 13th Street NW, Suite 1200 (old address)  
Washington, DC 20005

11/1997-9/1999

Counsel to the Attorney General  
Office of the Attorney General  
United States Department of Justice  
950 Pennsylvania Ave NW  
Washington, DC 20001

9/1999-1/2001

Deputy Assistant Attorney General  
Civil Division  
United States Department of Justice  
950 Pennsylvania Ave NW  
Washington, DC 20005

6/2001-5/2008

Jenner & Block  
601 13th Street NW, Suite 1200 (old address)  
Washington, DC 20005

5/2008-present

Jenner & Block  
1099 New York Ave. NW, Suite 900 (new address)  
Washington, DC 20001

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

As a junior associate at Jenner & Block (roughly 1992-94), I worked on a wide variety of constitutional and appellate cases. As a mid-level/senior associate at Jenner & Block (roughly 1994-97), I worked primarily on a large intellectual property litigation and on various matters arising out of the 1996 Telecommunications Act.

As Counsel to the Attorney General (1997-99), I assisted the Attorney General in overseeing the civil litigation components of the Department of Justice and also worked



on a variety of special projects, including professional responsibility issues for DOJ attorneys, Native American issues, especially law enforcement in Indian Country, and tobacco policy.

As Deputy Assistant Attorney General (1999-2001), I supervised the Federal Programs Branch of the Civil Division, which defends the agencies of the federal government in important constitutional, regulatory, national security, personnel and other litigation. I also had partial supervisory responsibility over the Tobacco Litigation Team.

As a partner at Jenner & Block, I initially worked on a variety of redistricting cases and other litigation matters (2001-2002). Since 2003, I developed a practice representing record companies, motion picture studios, and other creative content providers in litigation concerning intellectual property rights, including rate-setting for statutory copyright licenses before the Copyright Royalty Board. That has been the majority of my practice from 2004. Since 2005, I have also served as Managing Partner of the D.C. Office of Jenner & Block.

ii. your typical clients and the areas, if any, in which you have specialized.

As a partner, I have focused on complex litigation, especially litigation with a governmental or public policy focus. Most recently, I have focused in the area of intellectual property, especially copyright and the challenges to copyright owners brought about by the dissemination of their content on the Internet and other digital media. In that context, my clients have been record companies and motion picture companies, including their trade associations (the Recording Industry Association of America and the Motion Picture Association of America) and a collective representing record companies and recording artists (SoundExchange, Inc.).

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

The vast majority of my practice has been in litigation (likely 90%). As an associate at Jenner & Block (1992-97), I appeared in court rarely, though with increasing frequency as the years went on, including serving as co-lead counsel in a jury trial in the District of Maryland in 1995 (as well as related motions practice) and motions practice related to litigation concerning the Telecommunications Act of 1996.

As Counsel to the Attorney General (1997-99), I did not appear in court or other proceedings.

As Deputy Assistant Attorney General (1999-2001), I appeared in court occasionally in sensitive matters and to support litigators under my supervision and I argued summary judgment motions in *State of Connecticut Department of Environmental Protection v. Occupational Safety & Health Administration*, a District of Connecticut case involving the effect of the 11th Amendment on the authority of Administrative Law Judges at the Department of Labor in cases involving state entities.

As a partner at Jenner & Block, I was counsel in a 4-week state court bench trial and a 4-week federal three-judge court bench trial in Texas in 2001. I was lead counsel in state court in a 2-week trial in Oklahoma City, OK in 2002.

I was on a partial leave from my firm in 2002 to take care of my ailing father.

In 2004, I appeared frequently in numerous federal courts throughout the country representing record companies in digital copyright litigation.

In 2005, I began a series of cases before the Copyright Royalty Board, which resulted in 2 trials in 2006 (in which I appeared frequently in court), 3 trials in 2007 (in which I made only a brief appearance in court), and 2 trials in 2008 (which I supervised, but in which I did not appear).

i. Indicate the percentage of your practice in:

1. federal courts;

60%

2. state courts of record;

10%

3. other courts.

30%

ii. Indicate the percentage of your practice in:

1. civil proceedings;

95%

2. criminal proceedings.

5%

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

i. What percentage of these trials were:

1. jury;

1 trial — co-lead counsel; tried to a verdict (and settled prior to appeal)

2. non-jury.

6 trials — 1 chief counsel, 5 co-counsel with others serving as lead counsel (I have excluded here 4 trials in which I was co-counsel and played a significant managerial role, but did not appear in court)

- e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

My firm has a substantial practice before the Supreme Court and I have been co-counsel on a number of cases. Copies of briefs that I have been able to locate are provided as follows:

Brief of Appellants, *Johnson v. DeGrandy*, No. 92-519 (Apr. 21, 1993)

Reply Brief of Appellants, *Johnson v. DeGrandy*, No. 92-519 (1993)

Brief Amici Curiae of Bolley Johnson and Peter R. Wallace, *Shaw v. Gerson*, No. 92-357 (1992-93)

Brief for Respondent, *Swint v. Chambers County Commission*, No. 93-1636 (Sept. 30, 1994)

Supplemental Brief for Respondent, *Swint v. Chambers County Commission*, No. 93-1636 (Dec. 15, 1994)

Petition for Writ of Certiorari, *American Library Association v. Reno*, No. 94-1653 (1994-95)

Reply Brief for Petitioners, *American Library Association v. Reno*, No. 94-1653 (1994-95)

Brief of Amici Curiae American Society of Addiction Medicine et al., *City of Edmonds v. Washington State Building Council*, No. 94-23 (1994-95)

Brief for Appellees National Association of Broadcasters and Association of Local Television Stations, *Turner Broadcasting System, Inc. v. FCC*, No. 95-992 (June 17, 1996)

Brief for Respondent, *McMillian v. Monroe County, Alabama*, No. 96-542 (Feb. 20, 1997)

Brief for Respondents Milberg Weiss Bershad Hynes & Lerach, *Lexecon Inc. v. Milberg Weiss Bersha Hynes & Lerach*, No. 96-1482 (Aug. 18, 1997)

Brief of Amicus Curiae Tanana Chiefs Conference in Support of Respondents, *State of Alaska v. Native Village of Venetie Tribal Government*, No. 96-1577 (1997-98)

Appellee's Motion To Affirm, *Balderas v. Texas*, No. 01-1196 (Mar. 21, 2002)

Brief of Amicus Curiae Recording Industry Association of America in Support of Respondent, *Eldred v. Ashcroft*, No. 01-618 (Aug. 5, 2002)

Conditional Cross-Appellees' Motion To Dismiss, *Jubelirer v. Vieth*, No. 02-135 (Aug. 13, 2002)

Appellants' Brief Opposing Motions To Dismiss or Affirm, *Jubelirer v. Vieth*, No. 01-1873 (Aug. 13, 2002)

Appellees' Motion To Affirm, *Vieth v. Jubelirer*, Nos. 01-1817 & 01-1823 (2002)

Jurisdictional Statement, *Vieth v. Jubelirer*, No. \_\_\_\_ (Apr. 25, 2003)

Brief for Appellants, *Vieth v. Jubelirer*, No. 02-1580 (Aug. 29, 2003)

Appellants' Brief Opposing Motions To Affirm, *Vieth v. Jubelirer*, No. 02-1580 (June 9, 2003)

Brief in Opposition of Respondents, *Veneman v. Montana Wilderness Association*, Nos. 03-109 and 03-123 (Sept. 24, 2003)

Brief Amicus Curiae of the National Association of Criminal Defense Lawyers in Support of Petitioner, *Robinson v. Montana*, No. 03-9432 (Apr. 19, 2004)

Petition for Writ of Certiorari, *Recording Industry Association of America, Inc. v. Verizon Internet Services, Inc.*, No. 03-1579 (May 24, 2004)

Reply Brief on Petition for Writ of Certiorari, *Recording Industry Association of America, Inc. v. Verizon Internet Services, Inc.*, No. 03-1579 (Aug. 30, 2004)

Brief for Motion Picture Studios and Recording Company Petitioners, *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, No. 04-480 (Jan. 24, 2005)

Reply Brief for Motion Picture Studios and Recording Company Petitioners, *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, No. 04-480 (Mar. 18, 2005)

Respondent Michael Schiavo's Opposition to Application for Injunction,  
*Schiavo ex rel. Schindler v. Schiavo*, No. 04A-825 (Mar. 24, 2005)

16. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- the date of representation;
  - the name of the court and the name of the judge or judges before whom the case was litigated; and
  - the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

The cases I have listed below I include as the most "significant" for different reasons -- some because of the public nature of the case and the importance of the issues involved and others because of the significance to my career.

***Turner Broadcasting System, Inc. v. Federal Communications Commission***

This was the one of the first matters (if not the first) I worked on when I became an associate at Jenner & Block, and it became a case that went to the U.S. Supreme Court twice. The case involved a challenge to the "must carry" provisions of the Cable Act, which require cable providers to carry local broadcast television signals. Initially, the United States refused to defend the constitutionality of the statute, and our client, the National Association of Broadcasters, intervened to defend the statute. I was a junior associate on the team, but played a significant role in developing expert testimony used in the case and had the opportunity to take my first deposition. The case was litigated before a three-judge panel in the district court and then to the U.S. Supreme Court, where I had the opportunity to draft portions of the brief. The case was remanded for further proceedings, and then returned to the Supreme Court again (my primary involvement with the case was in the first district court and Supreme Court proceedings). Ultimately the Supreme Court upheld the statute.

COURT	DOCKET NO.	KEY DECISIONS
D.D.C. (Williams, Jackson, Sporkin)	Nos. 92-2247, 92-2292, 92-2494, 92-2495, 92-2558	819 F. Supp. 32 (1993)
U.S. Supreme Court	No. 93-44	512 U.S. 622 (1994)
D.D.C. (Williams, Jackson, Sporkin)	Nos. 92-2247, 92-2292, 92-2494, 92-2495, 92-2558	910 F. Supp. 734 (1995)
U.S. Supreme Court	No. 95-992	520 U.S. 180 (1997)

PRINCIPAL COUNSEL	
John Tyler/Jim Gilligan U.S. Department of Justice Civil Division Federal Programs Branch 20 Massachusetts Ave. NW Washington, DC 20530	Bruce D. Sokler, 202-434-7303 Mintz Levin 701 Pennsylvania Ave. N.W. Washington, DC 20004
H. Bartow Farr, III, 202-775-0184 Farr & Taranto Suite 800 1220 19th Street, N.W. Washington, DC 20036	Robert D. Joffe, 212-474-1448 Cravath, Swaine & Moore LLP Worldwide Plaza 828 Eighth Avenue New York, NY 10019-7475
Bruce J. Ennis, Jr. (co-counsel) <i>Deceased</i>	<i>Additional counsel available on public docket and identified in decisions listed above.</i>

### ***Smith v. DeLozier***

This lawsuit was brought by a young woman who had been secretly videotaped by a superior at a Montgomery County pool while she was undressing. The case involved allegations of sexual harassment and other tort claims. This was the first case that I took to trial as co-lead counsel. The case was tried before a jury and resulted in a verdict for the plaintiff, my client. It was subsequently settled on appeal.

COURT	DOCKET NO.	KEY DECISIONS
D.Md. (Messitte)	No. PJM 94-309	Jury Verdict — Dec. 8, 1995
PRINCIPAL COUNSEL		
Carol Garfiel Freeman, 202-354-3371 14 Accord Ct. Potomac, MD 20854	Jodie L. Kelley (co-counsel), 202-752-1611 3900 Wisconsin Ave., N.W. Washington, DC 20016	
Hon. Sharon Veronica Burrell, 240-777-9296 Circuit Court for Montgomery County Suite 150 27 Courthouse Square Rockville, MD 20850	<i>Additional counsel available on public docket.</i>	

### ***United States v. Philip Morris***

This is the United States' lawsuit against the major tobacco companies based on Medicare and Medicaid repayment statutes and the civil RICO statute. The case alleges a decade-long conspiracy among the tobacco companies and related entities to defraud the

public about the health effects of cigarettes and the addictiveness of nicotine and to market cigarettes to minors. Although I did not appear in court on the matter, I was very involved in tobacco policy matters, including efforts to enact federal legislation concerning tobacco in 1998, when I served as counsel to the Attorney General, and I served in a supervisory capacity over the lawsuit in 1999-2001 while I served as Deputy Assistant Attorney General in the Civil Division.

COURT	DOCKET NO.	KEY DECISIONS
D.D.C. (Kessler)	No. 99-2496	116 F. Supp. 2d 131 (2000) 153 F. Supp. 2d 32 (2001) — <i>I was no longer involved at this stage.</i>
<b>PRINCIPAL COUNSEL</b>		
Timothy M. Broas, 202-282-5750 Winston & Strawn LLP 1700 K Street, N.W. Washington, DC 20006		Dan K. Webb, 312-558-5856 Winston & Strawn LLP 35 W. Wacker Drive Chicago, IL 60601
W. Neil Eggleston, 202-383-8140 555 13th Street, N.W. Washington, DC 20004		J. Patrick Glynn, 202-616-4200 Torts Branch, U.S. Department of Justice P.O. Box 340 Benjamin Franklin Station Washington, DC 20044

***State of Connecticut Department of Environmental Protection v. Occupational Safety & Health Administration***

During my time as Deputy Assistant Attorney General, I appeared in court only occasionally, as it was and remains my view that career attorneys at DOJ should argue that vast majority of cases in the lower federal courts. I did appear in court to represent the United States in one case concerning the effect of the 11th Amendment on the authority of Administrative Law Judges at the Department of Labor in cases involving state entities. This was one of a series of cases raising similar issues that were being handled by the Federal Programs Branch of the Civil Division. I argued the case in district court in Connecticut.

COURT	DOCKET NO.	KEY DECISIONS
D. Conn.	No. 3:99CV2291 GLG	138 F. Supp. 2d 285 (D. Conn. 2001), <i>aff'd in part and rev'd in part</i> , 356 F.3d 226 (2d Cir. 2004)

PRINCIPAL COUNSEL	
Carla R. Walworth, 212-318-6466 Paul, Hastings, Janofsky & Walker LLP Park Avenue Tower 75 E. 55th Street, First Floor New York, NY 10022	Mark T. Quinlivan (co-counsel), 202-514-3346 U.S. Department of Justice Civil Division, Room 7128 20 Massachusetts Ave., N.W.  <i>Additional counsel available on public docket  and identified in decisions listed above.</i>

### ***Texas Redistricting***

Jenner & Block represented Democratic voters in litigation concerning the redistricting of Texas following the 2000 Census. The state legislature deadlocked, throwing redistricting into the courts. I was one of the trial counsel (there were many given the multitude of parties in the case) with a primary role in developing expert testimony on, among other things, the factors that courts consider in redistricting cases, the fairness of various proposed plans, and historical factors that might influence how districts should be drawn. There was a four-week trial in state court, which resulted in a decision that essentially vindicated the arguments of our clients that the court should draw a plan similar to the one that the prior legislature had drawn a decade before. That decision was vacated by the Texas Supreme Court, which also indicated that there was insufficient time for the state courts to complete their work before the federal courts had to conduct hearings. Subsequently, the case was tried again before a three-judge federal court in a second four-week trial. The three-judge panel also adopted the approach advocated by our clients and drew a redistricting plan that it believed made the least change over the decade-old, legislatively enacted plan. That decision, *Balderas v. Texas*, was affirmed by the U.S. Supreme Court.

COURT	DOCKET NO.	KEY DECISIONS
Texas Supreme Court ( <i>Perry v. Del Rio</i> )	Nos. 01-0728, 01-0810, 01-0827	66 S.W.3d 239 (2001)
E.D. Tex. ( <i>Balderas v. Texas</i> ) (Higginbotham, Hannah, Ward)	No. Civ. A 6:01-CV-158	(per curiam) Nov. 14, 2001, <i>summarily aff'd</i> , 536 U.S. 919 (2002)
U.S. Supreme Court ( <i>Balderas v. Texas</i> )	No. 01-1196	536 U.S. 919 (2002)
E.D. Tex. ( <i>Session v. Perry</i> ) (Higginbotham, Hannah, Ward)	No. Civ. A 2:03-CV-354	298 F. Supp. 2d 451 (E.D. Tex. 2004)
E.D. Tex. ( <i>Henderson v. Perry</i> ) (Higginbotham, Ward, Rosenthal)	No. Civ. A 2:03-CV-354	399 F. Supp. 2d 756 (E.D. Tex. 2005)
U.S. Supreme Court ( <i>LULAC v. Perry</i> )	Nos. 05-204, 05-254, 05-276, 05-439	548 U.S. 399 (2006)



*Litigation over these issues also occurred to a less significant extent in other courts as described in the decisions referred to here.*

<b>PRINCIPAL COUNSEL</b>	
J. Gerald Hebert (co-counsel), 202-736-2200 Campaign Legal Center 1640 Rhode Island Ave., N.W. Suite 650 Washington, DC 20036	Hon. Morris L. Overstreet, 713-313-7126 Thurgood Marshall School of Law Texas Southern University 3100 Cleburne St. Houston, TX 77004
Jonathan D. Pauerstein, 210-225-5000 Tuggey Rosenthal Pauerstein Sandoloski Agather LLP 755 East Mulberry, Suite 200 San Antonio, TX 78212	Richard Edwin Gray III, 512-482-0061 Gray & Becker, P.C. 900 West Ave. Austin, TX 78701
Nina Perales, 210-224-5476 Mexican American Legal Defense Fund 110 Broadway Suite #300 San Antonio, TX 78205	Andy Taylor, 713-222-1817 x11 Andy Taylor & Associates, P.C. 405 Main Street, Suite 200 Houston, TX 77002
<i>Additional counsel available on public docket and identified in decisions listed above.</i>	

### ***Oklahoma Redistricting***

Jenner & Block represented the Speaker of the state legislature of Oklahoma in litigation concerning the redistricting of Oklahoma following the 2000 Census. The Governor and the legislature deadlocked and a state court was called upon to redraw the districts. I served as lead counsel, developing much of the expert testimony, conducting the trial, and doing the closing argument in a trial that lasted approximately two weeks. The state trial court ultimately ruled against my clients and adopted a plan favored by other parties. The case was appealed to the Oklahoma Supreme Court, which affirmed.

<b>COURT</b>	<b>DOCKET NO.</b>	<b>KEY DECISIONS</b>
Oklahoma County District Court ( <i>Alexander v. Taylor</i> ) (Robertson)	No. CJ-2002-855	May 31, 2002
Supreme Court of Oklahoma ( <i>Alexander v. Taylor</i> )	No. 97,836	51 P.3d 1204 (2002)
W.D. Okla. ( <i>Edwards v. Keating</i> ) (Seymour, Russell, Cauthron)	No. 5:02-cv-00306-R	June 5, 2002

PRINCIPAL COUNSEL	
Don G. Holladay (co-counsel), 405-236-2343 Holladay Chilton & Degiusti PLLC 204 North Robinson, Suite 1550 Oklahoma City, OK 73102	Fred A. Leibrock, 405-235-4100 Phillips Murrah P.C. Corporate Tower — Thirteenth Floor 101 N. Robinson Oklahoma City, OK 73102
Andrew W. Lester, 405-844-9900 Lester, Loving & Davies, P.C. 1701 S. Kelly Edmond, OK 73013	Lee Slater, 405-608-0914 2601 Northwest Expressway, Suite 210-West P.O. Box 14785 Oklahoma City, OK 73113
<i>Additional counsel available on public docket and identified in decisions listed above.</i>	

### ***Terri Schiavo Litigation***

In 2003, I began representing Michael Schiavo in his role as guardian of Terri Schiavo in litigation concerning her right to remove the feeding tube which was keeping her alive. At the time I became involved in the matter, the Florida courts had fully and finally litigated the question of Ms. Schiavo's wishes under procedures prescribed by the Florida legislature -- through multiple trials, appeals and petitions to the Florida Court of Appeals, the Florida Supreme Court, and the U.S. Supreme Court. In 2003, however, the Florida legislature enacted a law that gave the Governor of Florida authority to make decisions about Ms. Schiavo's treatment, in contravention of her wishes as conclusively determined by the Florida courts. At that time, in conjunction with counsel who had represented Ms. Schiavo in the prior proceedings in state court, we sought an injunction to invalidate the Florida law as a violation of the Florida Constitution and its separation of powers. That case was litigated in the state trial court, through the court of appeals, and ultimately to the Florida Supreme Court, which ruled 9-0 that the statute was unconstitutional. I and a team I supervised at Jenner & Block had the primary role in drafting the briefs on these constitutional issues.

In 2005, when all of the litigation over the state statute was resolved, Congress enacted legislation that authorized Ms. Schiavo's parents to go to federal court in the matter. The meaning of that federal statute, its constitutionality, and the likelihood of success of the claims brought by Ms. Schiavo's parents were litigated through federal district court, the 11th Circuit Court of Appeals, and the U.S. Supreme Court twice in less than two weeks. In addition, there were ongoing state court proceedings and habeas proceedings in another federal court. I and a team that I supervised at Jenner & Block worked 24 hours a day and drafted virtually all of the briefs in that litigation, including multiple briefs before the 11th Circuit and the U.S. Supreme Court, which were drafted in a matter of hours. Ultimately, the district court found there was no basis for overturning the decisions of the Florida courts; the 11th Circuit affirmed, and the United States Supreme Court denied a stay on multiple occasions.

COURT	DOCKET NO.	KEY DECISIONS
Fla. 6th Circuit Court ( <i>Schiavo v. Bush</i> ) (Baird)	No. 03-008212-CI-20	2003 WL 22762709 (Nov. 4, 2003)
Fla. 2d Dist. Court of App. ( <i>Bush v. Schiavo</i> ) (Fulmer, Davis, Wallace)	No. 2D03-5244	861 So. 2d 506
Fla. 2d Dist. Court of App. ( <i>Bush v. Schiavo</i> ) (Fulmer, Davis, Wallace)	No. 2D03-5123	871 So. 2d 1012 (2004)
Fla. 6th Circuit Court ( <i>Schiavo v. Bush</i> ) (Baird)	No. 03-008212-CI-20	2004 WL 980028 (2004)
Fla Supreme Court ( <i>Bush v. Schiavo</i> )	No. SC04-925	885 So. 2d 321 (2004)
Fla. 6th Circuit Court ( <i>In re Guardianship of Schiavo</i> ) (Greer)	No. 90-2908-GD-003	2005 WL 459634 (2005)
Fla. 2d Dist. Court of App. ( <i>In re Guardianship of Schiavo</i> ) (Altenbernd, Fulmer, Wallace)	No. 2D05-968	916 So. 2d 814 (2005)
M.D. Fla. ( <i>Advocacy Center for Persons with Disabilities, Inc. v. Schiavo</i> ) (Merryday)	No. 8:03-cv-2167	2003 U.S. Dist. LEXIS 19949 (2003)
M.D. Fla. 2005 ( <i>Schiavo ex rel. Schindler v. Schiavo</i> ) (Whittemore)	No. 8:05 Civ. 530	357 F. Supp. 2d 1378 (2005)
M.D. Fla. ( <i>Schiavo ex rel. Schindler v. Schiavo</i> ) (Whittemore)	No. 8:05-CV-530	358 F. Supp. 2d 1161 (2005)
11th Circuit Court of Appeals ( <i>Schiavo ex rel. Schindler v. Schiavo</i> ) (Carnes, Hull, Wilson)	No. 05-11556	403 F.3d 1223 (2005)
11th Circuit Court of Appeals ( <i>Schiavo ex rel. Schindler v. Schiavo</i> ) (Carnes, Hull, Wilson)	No. 05-11628	403 F.3d 1289 (2005)
11th Circuit Court of Appeals ( <i>Schiavo ex rel. Schindler v. Schiavo</i> ) (en banc)	No. 05-11628	404 F.3d 1270 (2005)
U.S. Supreme Court ( <i>Bush v. Schiavo</i> )	No. 04-757	543 U.S. 1121 (2005)
U.S. Supreme Court ( <i>Schiavo ex rel. Schindler v. Schiavo</i> )	No. 04-825	544 U.S. 945 (2005)
U.S. Supreme Court ( <i>Schiavo ex rel. Schindler v. Schiavo</i> )	No. 04-844	544 U.S. 957 (2005)
<i>Litigation over these issues is also reflected in related decisions of these courts, as described in the decisions referred to here.</i>		
PRINCIPAL COUNSEL		
<div> George J. Felos, 727-736-1402  Felos &amp; Felos, P.A.  2210 Harbor View Drive  Dunedin, FL 34698 </div> <div> Kenneth L. Connor, 703-669-3377  Wilkes &amp; McHugh, P.A.  50 Catoctin Circle N.E., Suite 203  Leesburg, VA 20176 </div>		

Patricia Fields Anderson, 727-363-6100  
 Anderson & Brodersen, P.A.  
 7116 Gulf Boulevard, Suite D  
 St. Pete Beach, FL 33706

Jay Alan Sekulow, 1-800-296-4529  
 American Center for Law & Justice  
 P.O. Box 90555  
 Washington, DC 20090

David C. Gibbs, III, 727-399-8300  
 Gibbs Law Firm, P.A.  
 5666 Seminole Boulevard, Suite Two  
 Seminole, FL 33772

*Additional counsel available on public docket  
 and identified in decisions listed above.*

***Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.***

The Grokster case involved the legality, under U.S. copyright law, of peer-to-peer file sharing services, which facilitate the downloading of movies, music, and other copyrighted material without authorization. The Ninth Circuit had issued a ruling that essentially allowed these services to operate -- a ruling that was devastating to the music and movie industries, among others. The Supreme Court determined to take the case and, in the most significant copyright decision in years, held that such services can be held liable for contributory copyright infringement under traditional principles that hold responsible those who aid and abet unlawful conduct. I was part of the team of drafters of the briefs before the Supreme Court and worked with other parties to explain to the public the importance of the decision.

COURT	DOCKET NO.	KEY DECISIONS
U.S. Supreme Court	No. 04-480	545 U.S. 913 (2005)
<i>Decisions in other courts preceded and followed the decision in which I was primarily involved.</i>		
PRINCIPAL COUNSEL		
Russell Frackman (co-counsel), 310-312-2000 Mitchell Silberberg & Knupp LLP 11377 West Olympic Blvd. Los Angeles, CA 90064	Thomas Hentoff (co-counsel), 202-434-5000 Williams & Connolly LLP 725 Twelfth Street, N.W. Washington, DC 20005	
Fred Von Lohmann, 415-436-9333 Electronic Frontier Foundation 454 Shotwell Street San Francisco, CA 94110	Richard G. Taranto, 202-775-0184 Farr & Taranto 1220 19th Street, NW Washington, DC 20036	
<i>Additional counsel available on public docket and identified in decision listed above.</i>		

### ***McDonnell Douglas Corp. v. United States***

In 1991, the United States terminated a contract with General Dynamics and McDonnell Douglas for a stealth aircraft, known as the A-12. The United States alleges that the contractors were terminated for poor performance, requiring the contractors to repay billions to the government. The contractors allege that the United States had no basis for terminating the contract without paying for work done to date and that the United States owes the contractors billions. The case is one of the largest and most significant government contracts cases in history, involving core questions about the government's authority to terminate contracts and issues concerning the state secrets privilege, given the sensitive nature of the technology at issue.

The suit was filed in 1991 and the case has been litigated up and down from the Court of Federal Claims with both sides having won apparent victory at one point or another. In 2003-04, I took over a primary role in developing General Dynamics' arguments on appeal from a loss before the Court of Federal Claims. The contractors argued that the Court of Federal Claims had applied the wrong standard in analyzing the contractors' performance. The Federal Circuit agreed, reversing the decision to the Court of Federal Claims. The case was remanded and is now back before the Federal Circuit on a subsequent decision.

<b>COURT</b>	<b>DOCKET NO.</b>	<b>KEY DECISIONS</b>
Fed. Circuit Court of Appeals	No. 02-5034, 02-5035, 02-5046	323 F.3d 1006 (2003)
<i>Decisions in other courts preceded and followed the decision in which I was primarily involved.</i>		
<b>PRINCIPAL COUNSEL</b>		
Caryl A. Potter, III, 202-408-6340 Sonnenschein Nath & Rosenthal 1301 K Street, N.W. Suite 600, East Tower Washington, DC 20005	David Cohen Commercial Litigation Branch, Civil Division Department of Justice <i>Retired — current contact details unknown</i>	<i>Additional counsel available on public docket and identified in decision listed above.</i>

### ***Webcasting and SDARS Rate-Setting Proceedings***

I have served as primary outside counsel to SoundExchange, a collective of record companies and recording artists, since 2005. SoundExchange collects and distributes royalties under statutory copyright licenses, which require sound recording copyright owners to license their works to online radio stations, satellite radio companies, and cable television radio services. Since that time, I have represented SoundExchange in a series of trials before the Copyright Royalty Board, created by Congress in 2004, which sets rates and terms for these statutory licenses. This includes two trials in 2006 concerning rates to be paid by online radio stations (webcasters) and three trials in 2007 concerning satellite and cable television radio stations. In each group of cases, I played a leading role in managing the litigation and in developing expert and other testimony for the case.

In the 2006 trials, I played a much more significant role at trial with fact and expert witnesses. Each of these cases resulted in significant increases in the royalty rates to be paid for the copyright licenses. Both cases are currently on appeal in the D.C. Circuit.

COURT	DOCKET NO.	KEY DECISIONS
Copyright Royalty Board ( <i>Digital Performance Right in Sound Recordings and Ephemeral Recordings for a New Subscription Service</i> )	No. 2005-5 CRB DTNSRA	72 Fed. Reg. 72253 (Dec. 20, 2007)
Copyright Royalty Board ( <i>Digital Performance Right in Sound Recordings and Ephemeral Recordings</i> )	No. 2005-1 CRB DTRA	72 Fed. Reg. 24084 (May 1, 2007)
Copyright Royalty Board ( <i>Adjustment of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services</i> )	No. 2006-1 CRB DSTRA	73 Fed. Reg. 4080 (Jan. 24, 2008)
Copyright Royalty Board ( <i>Adjustment or Determination of Compulsory License Rates for Making and Distributing Phonorecords</i> )	No. 2006-3 CRB DPRA	73 Fed. Reg. 57033 (Oct. 1, 2008) (proposed)
PRINCIPAL COUNSEL		
<div> <div> Jay Cohen, 212-373-3163  Paul, Weiss, Rifkind Wharton &amp; Garrison LLP  1285 Avenue of the Americas  New York, NY 10019 </div> <div> Ken Steinthal, 650-802-3081  Weil Gotshal  201 Redwood Shores Parkway  Redwood Shores, CA 94065 </div> </div> <div> David D. Oxenford, 202-973-4256  Davis Wright Tremaine LLP  1919 Pennsylvania Ave., N.W. Suite 200  Washington, DC 20006 </div> <div> Bruce Rich, 212-310-8170  Bruce Meyer, 212-310-8013  Weil Gotshal  767 Fifth Avenue  New York, NY 10153 </div> <div> Bruce Joseph, 202-719-7258  Karyn Albin, 202-719-4913  Wiley Rein LLP  1776 K Street NW  Washington, DC 20006 </div> <div> Paul Fakler, 212-554-7632  Moses &amp; Singer LLP  The Chrysler Building  405 Lexington Avenue  New York, NY 10174 </div>		

Fernando Laguarda, 202-730-1308  
Harris, Wiltshire & Grannis LLP  
1200 Eighteenth St., NW 12th Floor  
Washington, DC 20036

*Additional counsel available on public docket  
and identified in decision listed above.*

17. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I was registered briefly as a lobbyist from 2002 to 2005 while I was a partner at Jenner & Block. An associate at the firm asked me to supervise him in a project on behalf of American victims of the East Africa bombings, who were seeking compensation similar to that provided to the 9/11 victims. Jenner & Block was not paid for this representation. I do not recall taking any action or meeting with any members of Congress or staff as part of this supervisory work. My recollection is that I gave advice to the associate on how to assist the victims and may have edited a letter or two. The lobbying registration was terminated in 2005.

18. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

In 1989-91, as a law student, I was an instructor in the Legal Methods program at Harvard Law School; this course taught legal writing and argument to first-year law students. In 1991, I was a teaching assistant in a course at Brown University called "The Politics of the Legal System." The course served as an introduction for college students to law and legal analysis. I have also occasionally been a guest speaker in courses taught by others. I also occasionally tutored students in high school and college.

19. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Under my firm's partnership agreement, any partner withdrawing from the firm is entitled to repayment of capital and a withdrawal benefit, pursuant to a specified formula. Under those provisions, I would be entitled to receive approximately \$632,500 in returned capital (money I previously paid to the firm for my shares of the partnership) and approximately \$768,200 as part of a withdrawal benefit. The precise amount of the withdrawal benefit may vary slightly depending on the exact date of my departure from the firm, because the benefit is calculated as a percentage of my compensation for the prior 12 months.



In addition, because the firm retains a portion of my compensation from 2008 until its books are closed, I will receive the balance of my compensation for last year at that time (approximately April 2009).

20. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

I have no current plans, commitments, or agreements.

21. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See SF-278.

22. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

23. **Potential Conflicts of Interest:**

- a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

There are a number of litigation matters in which I have been involved that would be under the purview of the Associate Attorney General. These include litigation in which I have represented SoundExchange, a collective of record companies and recording artists, in litigation before the Copyright Royalty Board, which is represented by the Civil Division of the Department of Justice before the D.C. Circuit. If confirmed, I would recuse myself entirely from these matters. In addition, the Civil Division is representing the United States in litigation against General Dynamics concerning the A-12 contract; I have represented General Dynamics in this matter. If confirmed, I would wholly recuse from the matter. There may be other issues in which a potential conflict could arise; I have requested the opportunity to speak with DOJ ethics professionals as soon as possible to review my past work, my firm's work, and any financial arrangements to determine if there are other potential conflicts that require appropriate action; I will take the action recommended by DOJ ethics officials.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will follow all relevant rules concerning conflicts of interests and, if confirmed, will be guided by the determinations of ethics professionals at the Department of Justice. With

respect to matters for which I know conflicts exist, I would inform relevant personnel that I am recused from such matters. As future matters arise, if I become aware that a potential conflict exists, I would consult with DOJ ethics professionals to determine the appropriate action and will be guided by their determinations.

24. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I have worked on a wide variety of pro bono matters during my tenure in private practice. My firm, Jenner & Block, is annually honored as one of the law firms most committed to pro bono work. Representative work includes:

Representation in the Schiavo case (over 400 hours over several years)

Preparation of an amicus brief on behalf of the Reporters Committee for Freedom of the Press and other First Amendment groups, protecting journalists from state officials trying to restrict access to newspapers that had criticized them (30-35 hours)

Represented the Southern Utah Wilderness Alliance in litigation aiming to preserve its natural habitats (55-60 hours);

Defense of an attorney wrongfully accused of ethics violations (60-70 hours)

Preparation of an amicus brief on landlord-tenant issues for the Coalition for Nonprofit Housing and Economic Development (15-20 hours)

# FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES			
Cash on hand and in banks	\$775,000 (see schedule)	Notes payable to banks-secured	None		
U.S. Government securities-add schedule	None (see schedule)	Notes payable to banks-unsecured	None		
Listed securities-add schedule	\$824,000 (see schedule)	Notes payable to relatives	None		
Unlisted securities--add schedule	None	Notes payable to others	None		
Accounts and notes receivable:	None	Accounts and bills due	None <sup>1</sup>		
Due from relatives and friends	None	Unpaid income tax	None		
Due from others	None	Other unpaid income and interest	None		
Doubtful	None	Real estate mortgages payable-add schedule	\$1,000,000		
Real estate owned-add schedule	\$1,500,000 (see schedule)	Chattel mortgages and other liens payable	None		
Real estate mortgages receivable	None	Other debts-itemize:	None		
Autos and other personal property	\$25,000 (see schedule)				
Cash value-life insurance	\$0 (see schedule)				
Other assets itemize:	\$1,554,000 (see schedule)				
		Total liabilities	\$1,000,000		

<sup>1</sup> This excludes ordinary credit card debt and household expenses, which we pay monthly.

				Net Worth	\$4,678,000
Total Assets				Total liabilities and net worth	\$3,678,000
CONTINGENT LIABILITIES				GENERAL INFORMATION	
As endorser, comaker or guarantor	0			Are any assets pledged? (Add schedule)	No.
On leases or contracts	0			Are you defendant in any suits or legal actions?	No.
Legal Claims	0			Have you ever taken bankruptcy?	No.
Provision for Federal Income Tax	0				
Other special debt	0				

## SCHEDULE OF ASSETS

<b>ASSETS</b>	
<b>Cash on hand and in banks</b>	
Checking, savings, liquid accounts	\$600,000
Certificates of Deposits	\$175,000
<b>U.S. Government securities</b>	
None (other than childhood savings bonds)	
<b>Listed securities</b>	
<b>Bonds</b>	
Pensacola, Florida Municipal Bonds	\$20,000
Johnson County, KS Municipal Bonds	\$10,000
Pembroke Pines, FL Municipal Bonds	\$15,000
West Harris County, Tex Municipal	\$21,000
Florida St. Department Municipal Bond	\$20,000
<b>Mutual Funds</b>	
Allianz NFJ Large Cap Mutual Fund	\$6,000
Calamos Market Neutral	\$30,000
Columbia Marsico 21st Mutual Fund	\$20,000
DWS Rreef Global Real Mutual Fund	\$4,000
iShares Russell 1000 Mutual Fund	\$4,000
Ivy Balanced Mutual Fund	\$32,000
Ivy Global Natural Mutual Fund	\$2,000
Nuveen Premium Inc. Municipal Fund	\$1,000
Royce Pennsylvania Mutual Fund	\$21,000
Templeton Global Bond Fund	\$21,000
Thornburg International	\$30,000
VA 529 Plan Allegheny Portfolio (college fund for son James)	\$8,000
<b>Stocks</b>	
Avon Products, Inc.	\$3,000
Bank New York Mellon	\$4,000
Baxter International Inc.	\$2,000
Donaldson Co.	\$4,000
Du Pont E I de Nemours	\$1,000
Enbridge Inc.	\$3,000
FPL Group Inc.	\$2,000
General Mills	\$6,000
Halliburton Co.	\$2,000
Hewlett Packard Co.	\$4,000

Honeywell Intl.Inc.	\$3,000
Int'l Business Machines	\$2,000
McDonalds Corp.	\$4,000
McKesson Corp.	\$4,000
Nokia Corp.	\$3,000
Pepsico Inc.	\$4,000
PPL Corp.	\$2,000
Procter & Gamble Co.	\$5,000
SAP ADR	\$3,000
Schlumberger Ltd.	\$3,000
Smith-NPHW PLC	\$3,000
Starwood Hotels and Resorts Worldwide	\$1,000
Time Warner Inc.	\$2,000
Torchmark Corp.	\$2,000
United Technologies Corp.	\$4,000
Vodafone Group PLC	\$3,000
Waddell & Reed	\$2,000
Waste Management Inc.	\$4,000
Wyeth	\$3,000
<b>Retirement Accounts</b>	
Principal Investors SAM	\$5,000
Merrill Lynch Bank USA RASP Cash account	\$1,000
Fidelity Growth Company Mutual Fund	\$120,000
Davis NY Venture Fund	\$104,000
NB Genesis Mutual Fund	\$70,000
Fidelity Retirement Money Market	\$40,000
Jenner & Block Defined Benefit Plan	\$80,000
Thrift Savings Plan	\$40,000
Fidelity Freedom 2030	\$11,000
<b>Unlisted securities</b>	None
<b>Accounts and notes receivable:</b>	None
Due from relatives and friends	None
Due from others	None
Doubtful	None
<b>Real estate owned</b>	
House at 5809 N. 37th St., Arlington, VA 22207	\$1,500,000
<b>Real estate mortgages receivable</b>	None
<b>Autos and other personal property</b>	
2003 Honda Accord	\$10,000
2006 Toyota Prius	\$15,000
<b>Cash value-life insurance</b>	
Term Life Insurance	\$0
<b>Other assets itemize:</b>	
Partner Capital in Jenner & Block	\$632,000
As a departing partner at Jenner & Block, I would be entitled to a withdrawal benefit calculated pursuant to the standard terms of the partnership agreement; the value of that benefit may vary slightly depending on my departure date from the firm.	\$768,000

A portion of my 2008 Jenner & Block compensation from 2008 will be paid in April of 2009 after the firm closes its books for 2008	\$154,000
I have not included the value of any non-investment household or personal items, such as furniture, electronic equipment, jewelry;	
<b>Total Assets</b>	<b>\$4,678,000</b>

AFFIDAVIT

I, \_\_\_\_\_, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(NOTARY)